IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEALNO.1151 OF 2005

Shri Saiprasad Sitaram Koli .. ..Appellant
Versus
Smt.Gangabai @ Janabai Sit aram Koli
and Anr. .. ..Respondents

Mr.N.V.Bandiwadekar for appellant
Mr.Narendra Walawalkar with Mr.G.H.Keluskar for respndents

CORAM : P.V.KAKADE, J.

DATE : 11TH OCTOBER, 2005.

P.C.:

1. The appellant has preferred this against the judgment and order passed by Addl. District Judge, Raigad Alibag dated 30.3.2005 dismissing the appeal and confirming the judgment and order passed by Lower court in Reg. Civil Suit No.43 of 1998 dated 29.9.2001 and declared that the plaintiff no.1 only the absolute owner of the suit house no.1113-A and the instrument of gift deed dated 12.9.1994 by deceased Nirabai Koli in favour of appellant-defendant was illegal and void ab-initio and not binding on the plaintiff no.1 and therefore, the plaintiff is entitled peaceful possession of the suit property.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for declaration as well as perpetual injunction in respect of the suit property basing his claim on suit gift deed allegedly executed by one Nirabai in favour of defendant pertaining to the business run into the property as well as his possession. The defendant stoutly denied the allegations made by the plaintiffs, inter alia, challenging the suit and seek its dismissal.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved their case and decree came to be passed. The appeal was carried to the District Court. The learned District Judge after hearing both the parties concurred with the findings recorded by the trial court. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant

sought to raise issue regarding limitation on the ground that the suit was based for declaration to the effect that the gift deed dated 12.9.1994 was illegal and suit came to be filed on 18.6.1998 and hence suit came to be filed beyond three years and thus it was barred by limitation. However, it is to be noted that the lower appellate court judge while adjudicating the dispute on merits came to the conclusion that the alleged Gift Deed dated 12.9.1994 was obtained by defendant taking disadvantage of illness of said Nirabai and therefore, it was not binding on the plaintiffs. It was further held that the appellant had failed to prove that he had become owner of the suit property by virtue of the said gift deed. On the other hand, it was held that the plaintiff had proved that the defendant had forcibly obtained possession of the suit property on 29.9.1994 and therefore, plaintiffs' suit deserves to be decreed. The learned counsel for the respondent brought to my notice the deposition made by the present appellant in the earlier proceeding, wherein he has admitted that he had broke-open the lock of the suit property. Moreover, in this matter the evidence is sufficient to show that the suit is based on previous possession and therefore, there cannot any bar of limitation only on the ground of

Gift Deed which is declared to be null and void.

5. Under the circumstances, I do not see any reason to interfere with the concurrent findings recorded by both the courts below, which are seen to be recorded after appreciating the entire evidence in proper perspective and therefore, it would brook no interference. In the result the appeal stands dismissed with no order as to costs.